

April 28, 1997

Genevieve Morelli
Executive Vice President
& General Counsel**RECEIVED****APR 28 1997**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARYHonorable Reed E. Hundt, Chairman
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554

Re: Ex Parte Presentation in CC Docket Nos. 91-213 & 96-262

Dear Mr. Chairman:

On behalf of the Competitive Telecommunications Association ("CompTel"), I am writing to clarify the record in the above-referenced proceeding on an issue of critical importance to competitive providers of long distance telephone services -- the rate structure for interstate switched transport services provided by incumbent local exchange carriers ("ILECs"). As shown below, the record in this proceeding supports only one conclusion, namely, that the Commission should continue the current approach of requiring ILECs to offer long distance carriers the option of routing tandem-switched transport traffic at a single, usage-based rate pursuant to the unitary rate structure that has been in place since 1993.

In the Notice of Proposed Rulemaking (FCC 96-488) released in this docket last December, the Commission asked (at ¶¶ 87-91) that interested parties comment on whether the current transport rate structure should be retained. The current structure gives long distance carriers the option of purchasing transport as an end-to-end access service (the so-called unitary rate structure) or on a piece-part basis (the so-called partitioned rate structure). Under the unitary structure, the long distance carrier purchases tandem-switched transport between the ILEC's serving wire center and end office at a single, per-minute rate, with mileage measured between those two offices rather than according to the physical routing of the traffic. Under the partitioned structure, a long distance carrier purchases tandem-switched transport by paying a flat-rated charge for the link between the serving wire center and the tandem and paying a usage-based charge for the link between the tandem and the end office, with mileage measured according to the physical routing of each link. Under both rate structures, the long distance carrier pays a separate per-minute charge for tandem switching.

Since the submission of comments and reply comments earlier this year, a consensus has emerged within the industry in favor of retaining the unitary rate structure on a permanent basis. Earlier this month, AT&T, Bell Atlantic and NYNEX submitted a joint proposal for access charge and universal service reform. In that proposal, those carriers affirmed that "[t]he existing interim transport rate structure should be continued." See Letter to W. Caton, FCC, from G. Evans,

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NYNEX (April 4, 1997), Attachment at page 3. Subsequently, Teleport Communications Group, Inc. ("TCG") and CompTel submitted a joint proposal to the Commission regarding, among other things, the rate structure for the transmission of tandem-switched transport. In that proposal, TCG and CompTel recommended that "[t]he current 'unitary pricing' option for tandem transport would be made permanent." See Letter to Hon. Reed E. Hundt, FCC, from James M. Smith, CompTel, and Robert C. Atkinson, TCG (April 16, 1997) at page 2. Those joint proposals confirm the development of a consensus among the interested industry segments -- long distance carriers, competitive local entrants, and ILECs -- in support of retaining the unitary rate structure option for long distance carriers.

Further, maintaining the unitary pricing option is necessary to ensure that the transport rate structure does not discriminate between carriers who purchase tandem-switched transport and carriers who purchase direct-trunked transport. As an empirical matter, it is clear that ILECs frequently route both tandem-switched and direct-trunked transport traffic through the tandem location over the same shared interoffice facilities. As the Commission recognized in CC Docket No. 91-213, "the physical routing of direct-trunked transport may parallel the routing of tandem-switched transport, passing through the tandem office, or may pass through some other intermediate LEC office." Transport Rate Structure and Pricing, 7 FCC Rcd 7006, 7020 (1992) (First Report and Order); see also Transport Rate Structure and Pricing, 10 FCC Rcd 3030, 3058 (1994) (Third Memorandum Opinion and Order on Reconsideration); Ex Parte Submission of Schneider Communications, Inc., CC Docket No. 91-213, filed May 22, 1992. The records in CC Docket No. 91-213 and this proceeding confirm that ILECs route a significant amount of direct-trunked traffic through the tandem location, where that traffic is subject to multiplexing or digital cross-connect processing. The attached diagram reflects the record evidence on the routing of tandem-switched and direct-trunked transport through the tandem location.

Given the nearly identical routing of tandem-switched and direct-trunked transport, it would be patently discriminatory for the Commission to force tandem-switched transport users, but not direct-trunked transport users, to purchase transport on a piece-part basis under the partitioned rate structure. Such a rate structure would impose two penalties upon tandem-switched transport users: first, they would pay two sets of fixed charges, while direct-trunked transport users would pay only one set of fixed charges and, second, they would pay for mileage according to the actual routing of their traffic by the ILEC, however circuitous that may be, while direct-trunked transport users would pay only for airline mileage between the end office and the serving wire center. The partitioned rate structure is particularly

unfair because it permits the ILECs to inflate the transport costs of long distance carriers through their unilateral decisions on how many tandems to build and where to place them. Moreover, were the Commission to impose the partitioned rate structure upon tandem-switched transport users, it would require the Commission to regulate the ILECs' decisions whether, where and when to place their access tandems. Therefore, if the Commission were to impose the partitioned rate structure upon tandem-switched transport users, then it also must impose that rate structure upon direct-trunked transport users through discrete charges for each transmission link as well as a separate charge for multiplexing or digital cross-connect processing at the tandem location.

Lastly, CompTel submits that adopting the partitioned rate structure on a mandatory basis for tandem-switched transport would not comply with the remand in Competitive Telecommunications Ass'n v. FCC, 87 F.3d 522 (D.C. Cir. 1996). In that appeal, the Court found that the Commission had not justified the disproportionate recovery of revenues from tandem-switched transport users compared to direct-trunked transport users. The Court directed the Commission to ensure that any differences in the transport charges paid by tandem-switched and direct-trunked users were cost-based or to provide a reasoned explanation for deviating from a cost-based regime. 87 F.3d at 532-33 & 536. Adopting a mandatory partitioned rate structure for tandem-switched transport would significantly increase the charges paid by carriers who depend upon tandem-switched transport, thereby exacerbating the discrimination that led to the remand now pending before the Commission.¹ Given the similar routing configuration for tandem-switched and direct-trunked transport, as well as the Commission's failure to obtain any additional transport cost data, the adoption of the partitioned rate structure on a mandatory basis for tandem-switched transport would not comply with the Court's remand and could be subject to immediate appellate relief.

¹ For similar reasons, the Commission would not be in compliance with the remand were it to adopt any rules in this proceeding which would cause an increase in the tandem switching charge. The Commission has not obtained any data suggesting that the current tandem switching charge recovers too few costs, and CompTel previously has submitted record evidence showing that the current tandem switching charge more than fully recovers the underlying tandem switching costs.

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For these reasons, as well as those stated in the record in the above-referenced proceedings, CompTel urges the Commission to retain the current unitary pricing option for tandem-switched transport.

Sincerely yours,

A handwritten signature in cursive script, reading "Genevieve Morelli / yd".

Genevieve Morelli

cc: Hon. James Quello
Hon. Rachelle B. Chong
Hon. Susan Ness

